EDITORIALS

OBSTRUCTING THE EFFICIENCY OF THE JUVENILE COURT

The recent decision of the Federal Supreme Court in *U. S.* v. *Moreland,* April 17, 1922, U. S. Adv. Op., 1921-22, p. 434, is thought by many to have created a serious obstruction to the efficiency of juvenile courts in dealing with delinquent parents. The auxiliary function of the juvenile court proceed against parents who "contribute" to their children's delinquency or dependency has long been foreseen to be the difficult legal problem of that type of court. The reason is that its methods with the juvenile himself may readily be interpreted as equitable; but its methods with the adult who "contributes" are difficult to interpret otherwise than as penal, and this would mean that all the traditional safeguards of penal proceedings must be strictly observed in measures taken against the parents.

And now comes the Federal Supreme Court to hold that an indictment by the grand jury is necessary, where a parent is sentenceable to a workhouse at hard labor, under the Juvenile Court Act. This is because the Fifth Amendment to the Federal Constitution requires grand jury proceedings for "a capital or other *infamous crime,*" and because the term "infamous crime" is defined as one whose punishment includes hard labor.

1. No doubt it seems ridiculous that a penalty of imprisonment with nothing to do should not be "infamous," while an imprisonment with daily work to do should be "infamous." The net result is irrational, concretely.

But that is often the case with the law's provisions. The Federal Constitution would today prevent Alexander Hamilton from being President of the United States at the age when he was acting as its financial savior. The question cannot be tested finally by its results. But irrational results should want to make us employ other paths of reasoning if available. This, however, the Supreme Court is disinclined to do—at least six of its members; for three dissent, including the chief justice and Justices Brandeis and Holmes.

2. In the first place, the court deems itself bound by precedent. In *Ex parte Wilson,* 114 U. S. 417, it had decided the very point, viz., that the test of an "infamous crime" was whether it was punishable by imprisonment by hard labor, and not whether the place named is called

a penitentiary or a workhouse. Just how sound in interpretation was the ruling in *Ex parte Wilson* is a long historical question. But three justices maintain that hard labor was not the necessary point of the opinion in *Ex parte Wilson,* supra, nor in its successor, *Wong Wing* v. *U. S.,* 163 U. S. 228. In such a situation, the majority could better have regarded the question as an open one, if thus they could have avoided an irrational result.

3. If the question were an open one, the definition of "infamous" could well have been revised. It is a shifting and shifty standard, changing with public opinion, and therefore difficult to fix without leading to that uncertainty which is the bane of the law. The dissenting opinion calls attention to the irrationality of deeming "infamous" a pleasant day's outdoor work on the Occoquan farm, which constitutes the district's workhouse. But if there is to be a revision of the definition of "infamous," it would be well to reconsider entirely the federal court's interpretation of "infamous" as determinable by the nature of the *punishment* instead of the nature of the *crime.* The federal court's interpretation of the Federal Constitution differs from the Illinois court's interpretation of the Illinois constitution. The latter may have its own objections; but at any rate "infamy" is a large idea which should be reconstrued in the light of the history of the term. (And in passing, let us lament that counsel apparently failed to call to the court's attention the learned articles of the late Professor Henry Schofield on the history of that term, and its interpretation, published in V Illinois Law Review, 108 and 321, and since reprinted in his "Essays on Constitutional Law and Equity," 1922.)

4. However, it is not necessary to fear much danger to the functions of the juvenile court in subsequent interpretation by the state courts. The constitutional terms differ widely, and each phrase has its own history. The matter becomes one of statutory construction in each instance. The state courts do not have to follow the federal court any more than the Illinois court did in *People* v. *Kipley,* 171 Ill. 44, 170 U. S. 182, or in *People* v. *Russell,* commented on by Professor Schofield in the articles cited above.

5. Moreover, may it not be well to reconsider the penal methods of the juvenile court towards "contributing" parents? If the court's main function is equitable, why cannot its auxiliary functions also be organized equitably? Why not, instead of sentencing the lazy parent to a penal farm, decree him to go to work, put him under a recognizance to turn over a share of his wages to support the children, and authorize garnishee process upon his employer? To reach the obstinate idler, why not declare him to be in contempt of court for not obeying

its order to work, and place him in the workhouse until he is willing to go to work?

We do not know whether this is practically likely to attain the point in all cases; experience alone could reveal this. But we do believe that it is more consonant with the "parens patriae" spirit, which is the fundamental feature of the modern juvenile court. And we also believe that it would serve to remove, in law, the obstruction that threatens to block the expansion of juvenile court methods in their dealings with parents and other adults.

We have long believed that the juvenile court methods are destined to become, by expansion, the methods of the future in dealing with certain classes of adult delinquencies. And we have also foreseen that the obstacle to this was sure to be in the traditional limitations of criminal procedure; for these limitations must apply in all courts, whatever their name. The only way to avoid them is to eliminate the penal features of juvenile court methods as to adults. Why not face this future aspect now? Why not harmonize the entire juvenile court practice with itself? Why not attempt to use the compulsory methods of the chancellor throughout, and thus make possible in experience the application of the methods of the juvenile court in a larger field?

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POLICY OF THE INSTITUTE RELATING TO SURVEYS OF THE ADMINISTRATION OF CRIMINAL JUSTICE— PROPOSALS OF THE COMMITTEE ON SURVEYS

The following statement concerning the policy of the Committee on Surveys of the Administration of Criminal Justice and the scope of such surveys is recommended for adoption:

1. Surveys when undertaken under the auspices of the Institute should be to unearth the facts concerning the Administration of Criminal Justice, not for the purpose of propagating any preconceived specific.

2. The representatives of the Institute in conference with local groups or individuals who are considering undertaking surveys of the administration of criminal justice in their respective communities should urge that such surveys be prosecuted, if practicable, along the lines laid down herein.

3. The Institute should not contribute either labor or money toward surveys which, there may be reason to suspect, are fostered